



High Court (Access to Court Documents) Amendment Rules 2009

Anand Satyanand, Governor-General

Order in Council

At Wellington this 11th day of May 2009

Present:

His Excellency the Governor-General in Council

Pursuant to section 51C of the Judicature Act 1908, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and with the concurrence of the Right Honourable the Chief Justice and at least 2 other members of the Rules Committee (of whom at least 1 was a Judge of the High Court), makes the following rules.

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Rules

- 1 Title**
These rules are the High Court (Access to Court Documents) Amendment Rules 2009.
- 2 Commencement**
These rules come into force on 12 June 2009.
- 3 Principal rules amended**
These rules amend the High Court Rules.
- 4 New subparts 2 and 3 of Part 3 substituted**
Subparts 2 and 3 of Part 3 are revoked and the following subparts substituted:

“Subpart 2—Access to court documents

“3.5 Interpretation

In this subpart, unless the context otherwise requires,—

“**access** means to search, inspect, or copy under the supervision of an officer of the court

“**court file** means a collection of documents in the custody or control of the court that relate to a proceeding (including any interlocutory application associated with the proceeding)

“**document**—

“(a) means any written material in the custody or control of the court that relates to a proceeding (including any interlocutory application associated with the proceeding), whether or not kept on a court file; and

“(b) includes documentary exhibits, video recordings, records in electronic form, films, photographs, and images in electronic form; but

“(c) excludes—

“(i) notes made by or for a Judge for his or her personal use; and

“(ii) any material that relates to the administration of the court

“**formal court record** means any of the following kept in a registry of the court:

“(a) a register or index:

“(b) any published list that gives notice of a hearing:

“(c) a document that—

“(i) may be accessed under an enactment other than these rules; or

“(ii) constitutes notice of its contents to the public:

“(d) a judgment, order, or minute of the court, including any record of the reasons given by the Judge:

“(e) the rolls of barristers and solicitors kept under section 56 of the Lawyers and Conveyancers Act 2006 or any former corresponding enactment.

“3.6 Application

- “(1) This subpart applies to documents while they are in the custody or control of the Court and until they are transferred to Archives New Zealand.
- “(2) These rules do not require any person to prepare a document that is not in existence at the time the document is sought.

“3.7 General right of access to formal court record and certain applications under Administration Act 1969

- “(1) Subject to rule 3.12, every person has the right to access the formal court record kept in a registry of the court.
- “(2) Subject to rule 3.12, every person has the right to access any document or court file that relates to an application or action for a grant of administration under the Administration Act 1969 or to a proceeding for the recall of any such grant.
- “(3) Despite subclause (1) or (2), a Judge may direct that judgments or orders, or documents or files of the kind described in subclause (2), not be accessed without the permission of the court.

“3.8 Right of parties to access court file or documents

- “(1) The parties to a proceeding, and their counsel, may (whether during or after the completion of the proceeding), under the supervision of an officer of the court,—
- “(a) search and inspect the court file or any document relating to the proceeding, without payment of a fee; and
- “(b) copy any part or parts of the court file or any document relating to the proceeding on payment of any prescribed fee.
- “(2) Despite subclause (1), a record of court proceedings in electronic form may be copied only with the permission of the court.
- “(3) Despite subclause (1), a Judge may direct that the court file or any document relating to the proceeding not be accessed by the parties or their counsel without the permission of the court.

“3.9 Access to documents during substantive hearing stage

- “(1) This rule applies during the hearing of a proceeding (other than the hearing of an interlocutory application) and until—

- “(a) the close of the 20th working day after the court has given the final judgment on the proceeding; or
 - “(b) the discontinuance of the proceeding before the final judgment is given.
- “(2) During the period to which this rule applies, any person may access any of the following documents relating to the proceeding:
- “(a) any pleading, reference, notice, or application filed in the court:
 - “(b) affidavits, depositions, or other written statements admitted into evidence for the purposes of the hearing:
 - “(c) documents admitted into evidence for the purposes of the hearing:
 - “(d) if any evidence given orally at the hearing has been transcribed, a transcript of that evidence.
- “(3) Despite subclause (2), a Judge may, on his or her initiative or on request, direct that any document, or part of a document, relating to the proceeding not be accessed without the permission of a Judge.
- “(4) A request for access to a document under this rule is made informally to the Registrar by letter that—
- “(a) identifies the requested document; and
 - “(b) gives the reasons for the request.
- “(5) The following provisions apply when a request for access to a document is made under subclause (4):
- “(a) the Registrar must promptly give the parties or their counsel a copy of the request:
 - “(b) a party who wishes to object must, before the relevant deadline (within the meaning of rule 3.10), give written notice of the objection to the Registrar, to the person who made the request, and to the other parties or their counsel:
 - “(c) on receipt of an objection, the Registrar must promptly refer the objection and the request to the Judge for determination:
 - “(d) unless the document is subject to a restriction stated in subclause (3) or in rule 3.12, the Registrar must promptly give the person who made the request access to the document—

- “(i) if the Registrar receives no objection before the expiry of the relevant deadline (within the meaning of rule 3.10); or
- “(ii) if the parties or their counsel earlier agree that the person be given access to the document:
- “(e) every request that relates to a document that is subject to a restriction stated in subclause (3) or in rule 3.12 is taken to be a request for the permission of a Judge, and must be promptly referred to the Judge by the Registrar.
- “(6) The Judge may determine an objection referred to the Judge under subclause (5)(c) or a request for permission under subclause (3) or (5)(e) in any manner the Judge considers just.
- “(7) For the purposes of subclause 2(b) and (c), **admitted into evidence** does not include evidence admitted provisionally.

“3.10 Meaning of relevant deadline in rule 3.9

- “(1) For the purpose of rule 3.9, where a party or counsel receives a copy of a request given to the party or counsel under that rule, **relevant deadline** means whichever of the following times is applicable:
 - “(a) if the copy of the request is received on a day on which the hearing is proceeding, 3 pm on the first working day after the day on which the copy is received:
 - “(b) if the copy of the request is received on any other day, 3 pm on the third working day after the day on which the copy is received.
- “(2) For the purposes of subclause (1), a person is deemed to receive a request—
 - “(a) on the day on which it is emailed, faxed, or handed to the person:
 - “(b) on the day after the day on which it is posted to the person.
- “(3) This rule overrides rule 6.6.

“3.11 Access to court files, documents, and formal court record in other cases

If a person is not eligible to access a document, court file, or any part of the formal court record under any of rules 3.7 to 3.9,

the person may access the document, court file, or any part of the formal court record with the permission of the court, given on an application made under rule 3.13.

“3.12 Restrictions on access

- “(1) Any right or permission conferred or given by these rules to access a document, court file, or any part of the formal court record is subject to—
- “(a) any enactment, court order, or direction limiting or prohibiting access or publication; and
 - “(b) the payment of any prescribed fees for access.
- “(2) A person may not access a document, court file, or any judgment or order, that relates to a proceeding brought under an enactment specified in subclause (3) unless—
- “(a) the person is a party to that proceeding; or
 - “(b) the court permits the person to do so.
- “(3) The enactments are as follows:
- “(a) Adoption Act 1955:
 - “(b) Alcoholism and Drug Addiction Act 1966:
 - “(c) Arbitration Act 1996:
 - “(d) Care of Children Act 2004:
 - “(e) Civil Union Act 2004:
 - “(f) Family Proceedings Act 1980:
 - “(g) Family Protection Act 1955:
 - “(h) Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:
 - “(i) Marriage Act 1955:
 - “(j) Mental Health (Compulsory Assessment and Treatment) Act 1992:
 - “(k) Property (Relationships) Act 1976:
 - “(l) Protection of Personal and Property Rights Act 1988:
 - “(m) Status of Children Act 1969:
 - “(n) any former provisions corresponding to provisions of any of the Acts mentioned in paragraphs (a) to (m).
- “(4) A person may search, inspect, or copy a document, court file, or any judgment or order relating to an application under rule 9.60 or 28.4 (which relate to the service of New Zealand subpoenas in Australia) only with the leave of a Judge.

“3.13 Applications for permission to access documents, court file, or formal court record other than at hearing stage

- “(1) This rule applies whenever the permission of the court is necessary under these rules and is sought to access a document, court file, or any part of the formal court record, except where access may be sought under rule 3.9.
- “(2) An application under this rule is made informally to the Registrar by a letter that—
- “(a) identifies the document, court file, or part of the formal court record that the applicant seeks to access; and
 - “(b) gives the reasons for the application.
- “(3) The application is heard and determined by a Judge or, if a Judge directs the Registrar to do so, by the Registrar.
- “(4) On receipt of an application made in accordance with subclause (2), the Judge or Registrar may direct that the person file an interlocutory application or originating application.
- “(5) The applicant must give notice of the application to any person who is, in the opinion of the Judge or Registrar, adversely affected by the application.
- “(6) The Judge or Registrar may dispense with the giving of notice under subclause (5) if it would be impracticable to require notice to be given.
- “(7) The Judge or Registrar may deal with an application on the papers, at an oral hearing, or in any other manner the Judge or Registrar considers just.

“3.14 Decisions on applications under rule 3.13

- “(1) The Judge or Registrar may refuse an application made under rule 3.13 or grant it in whole or in part without conditions or subject to any conditions that the Judge or Registrar thinks appropriate.
- “(2) A Judge may permit access to a series of files for the purposes of research.

“3.15 Review of decisions by Registrar

- “(1) Any decision by a Registrar under rule 3.14 is subject to review by a Judge on the application of the applicant or any person affected.

“(2) Rule 2.11 applies to subclause (1) as if the reference in that rule to a party were a reference to the applicant or any person affected.

“3.16 Matters to be taken into account

In determining an application under rule 3.13, or a request for permission under rule 3.9, or the determination of an objection under that rule, the Judge or Registrar must consider the nature of, and the reasons for, the application or request and take into account each of the following matters that is relevant to the application, request, or objection:

- “(a) the orderly and fair administration of justice:
- “(b) the protection of confidentiality, privacy interests (including those of children and other vulnerable members of the community), and any privilege held by, or available to, any person:
- “(c) the principle of open justice, namely, encouraging fair and accurate reporting of, and comment on, court hearings and decisions:
- “(d) the freedom to seek, receive, and impart information:
- “(e) whether a document to which the application or request relates is subject to any restriction under rule 3.12:
- “(f) any other matter that the Judge or Registrar thinks just.

“Subpart 3—Investment of funds in court

“3.17 Application for order

- “(1) Subclause (2) applies if money has been, or is to be, paid into court in a proceeding under—
 - “(a) an order of the court; or
 - “(b) a provision of these rules.
- “(2) If this subclause applies, a party to the proceeding may apply to the court for an order directing the Registrar to invest the money on whatever security or securities the court thinks just.
- “(3) Unless the court otherwise orders, an application may not be made until 15 working days after the money has been paid into court.

“Compare: 1908 No 89 Schedule 2 r 69

“3.18 Powers of court in relation to application

- “(1) The court may, when making an order for investment of money under rule 3.17,—
- “(a) direct that the security on which the money is invested must be taken in the name of the Registrar alone or with another person the court nominates; and
 - “(b) also give—
 - “(i) directions as to the form and the terms of the security; and
 - “(ii) any other directions as may appear necessary or expedient.
- “(2) An order may be varied by the court on the application of a party to the proceeding.
- “Compare: 1908 No 89 Schedule 2 r 70

“3.19 Disposal of securities and income

- “(1) The court may, on the application of a party to a proceeding, direct that—
- “(a) the security on which money is invested under rule 3.17 be transferred to a party or parties in the shares or proportions the court thinks just; or
 - “(b) the security be converted into money and the resulting capital and income be paid to a party or parties in the shares or proportions the court thinks just; or
 - “(c) the capital be paid to a party or parties and the income be paid to another party or parties in the shares or proportions the court thinks just.
- “(2) An application may be made—
- “(a) at the time of making an order under rule 3.17; or
 - “(b) at a later time.
- “(3) Unless the court directs otherwise, the income received from an investment under an order under rule 3.17 must be paid to the party or parties who are found by the court to be entitled to the capital, in the shares or proportions the court thinks just.
- “Compare: 1908 No 89 Schedule 2 r 71”.

- 5 Leave to serve New Zealand subpoena on witness in Australia**
Rule 9.60(5) is amended by omitting “Despite rule 3.9” and substituting “As provided in rule 3.11”.
- 6 Issue of subpoenas for service in Australia**
Rule 28.4(9) is amended by omitting “Despite rule 3.9” and substituting “As provided in rule 3.11”.
- 7 Transitional provision**
Any application or appeal under subpart 2 of Part 3 of the High Court Rules (as in force immediately before the commencement of these rules) that is not disposed of on the commencement of these rules must be dealt with as if rule 4 of these rules had not been made.

Michael Webster,
for Clerk of the Executive Council.

Explanatory note

This note is not part of the rules, but is intended to indicate their general effect.

These rules, which come into force on 12 June 2009, amend the High Court Rules. The substantive changes concern access to court documents.

Rule 4 replaces existing subparts 2 and 3 of Part 3 of the High Court Rules with 2 new subparts. *New subpart 2* is about access to court documents. The subpart consists of *new rules 3.5 to 3.16*.

New rule 3.5 defines terms used in this subpart.

New rule 3.6 clarifies that court documents may be accessed only if they are in existence and while they are in the custody or control of the court and until they are transferred to Archives New Zealand.

New rule 3.7 gives every person the right to access the formal court record kept in a registry of a court. The term formal court record

is defined in *new clause 3.5* and includes judgments, orders, registers, and the rolls of barristers and solicitors. The rule also confers a general right to access court documents relating to grants of administration of deceased estates. However, a Judge may direct that judgments or orders or documents related to grants of administration not be accessed without the permission of the court.

New rule 3.8 gives the parties and their counsel the right to access the court file or any document relating to the proceeding. The parties or their counsel do not have to pay a fee to search and inspect the court file or related document, but copying is subject to any prescribed fee.

New rules 3.9 and 3.10 provide for a simplified form of access to certain documents during the substantive hearing stage of a proceeding. This stage starts with the hearing of the proceeding and ends 20 working days after the court has given the final judgment. In cases where the proceeding is discontinued before the final judgment is given, the period ends with the discontinuance of the proceeding.

The documents that may be accessed under *new rule 3.9* are—

- any pleading, reference, notice, or application filed in the court:
- affidavits, depositions, or other written statements admitted into evidence for the purpose of the hearing:
- documents admitted into evidence for the purposes of the hearing:
- if any evidence given orally at the hearing or the trial has been transcribed, a transcript of that evidence.

A requester must make the request by letter to the Registrar. The request must identify the requested document and the reasons for the request. The Registrar must promptly give the parties or their counsel a copy of the request. A party who wishes to object must, before the relevant deadline, give the written objection to the Registrar, to the requester, and to the other parties. If a party receives a copy of the request when the hearing is proceeding, the relevant deadline for objecting is 3 pm on the first working day after receipt of the copy of the request. In any other case, the relevant deadline is 3 pm on the third working day after receipt of the copy of the request. *New rule 3.10(2)* sets out when a party is deemed to receive a copy of a request. If no objection is received by the relevant deadline or if the parties accede to the request before that deadline, the Registrar must

promptly give the requester access to the requested document unless the document is subject to a specific restriction directed by a Judge or subject to a general restriction stated in *new rule 3.12*. If there is an objection or if the document is subject to a restriction, the Registrar must promptly refer the matter to the Judge for determination. The Judge may determine an objection or a request for permission in any manner the Judge considers just.

New rule 3.11 allows a person who is not eligible to access court documents under any of the previous rules to access those documents with the permission of the court, given on an application made under *new rule 3.13*.

New rule 3.12 clarifies that access is subject to certain restrictions. These restrictions are contained in enactments, court orders, or directions limiting or prohibiting access or publication. Where regulations prescribe fees for accessing court documents, access is subject to the payment of those fees.

The rule also imposes restrictions on proceedings under specified statutes. The listed statutes include family law statutes, mental health legislation, and the Arbitration Act 1996. Documents relating to proceedings under a listed statute may be accessed only by parties or by persons who have obtained the prior permission of the court.

New rules 3.13 to 3.15 provide for applications for the court's permission to access documents that cannot be accessed under any of the previous rules. Applications are made informally to the Registrar by a letter that identifies the document and the reasons for the application. The application is heard and determined by a Judge or by the Registrar if a Judge so directs. The applicant may be directed to file an interlocutory application or originating application. Applications can be dealt with on the papers or at an oral hearing or in any other manner the Judge or Registrar considers just. The Judge or Registrar may refuse an application or grant it in whole or in part without conditions or subject to any conditions that the Judge or Registrar thinks appropriate. Any decision by a Registrar is subject to review by a Judge.

New rule 3.16 provides for the matters that have to be taken into account when decisions on access are made under these rules. The

Judge or Registrar must consider the nature of, and the reasons for, the application or request and take into account the following matters:

- the orderly and fair administration of justice:
- the protection of confidentiality, privacy interests (including those of children and other vulnerable members of the community), and any privilege held by, or available to, any person:
- the principle of open justice, namely, encouraging fair and accurate reporting of, and comment on, hearings and decisions:
- the freedom to seek, receive, and impart information:
- whether a document to which the application or request relates is subject to any restriction under *new rule 3.12*:
- any other matter that the Judge, other judicial officer, or Registrar thinks just.

New rules 3.17 to 3.19 re-enact, without change, existing rules 3.12 to 3.14, which comprise subpart 3 of Part 3, relating to orders for the investment of money paid into court. The reason for the re-enactment is simply to enable the new rules on access to court documents to be numbered sequentially without resorting to numbers such as “3.11A”.

Rules 5 and 6 make consequential amendments.

Rule 7 is a transitional provision. Any application or appeal pending at the commencement of these rules must be dealt with under the relevant High Court Rules in force before the commencement of these rules.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 14 May 2009.
These rules are administered by the Ministry of Justice.
